

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SHAWN MICHAEL TOWNE,

Plaintiff,

vs.

No. CIV 22-0727 JB/KK

BERNALILLO COUNTY METROPOLITAN
DETENTION CENTER,

Defendant.

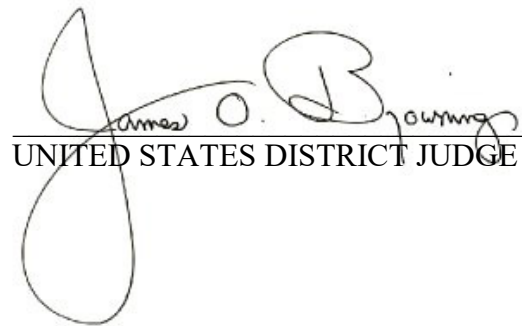
MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiff's Motion For: Voluntary Dismissal W/out Prejudice, filed February 6, 2023 (Doc. 8)("Motion"). Plaintiff Shawn Michael Towne initiated this case on September 30, 2022, by filing a letter regarding a civil rights complaint under 42 U.S.C. § 1983. See Letter from Shawn Michael Towne to United States Court Clerk (dated September 23, 2022), filed September 30, 2022 (Doc. 1)("Letter"). In the Letter, Towne asserts violations of his constitutional rights arising from his conditions of confinement at the Bernalillo County Metropolitan Detention Center ("MDC"). See Letter at 2-5. On October 27, 2022, Towne filed the Complaint for Violation of Civil Rights (Prisoner Complaint) (Doc. 3)("Complaint"). In the Complaint, Towne alleges violations of his rights under the First and Eighth Amendments to the Constitution of the United States of America. See Complaint ¶ II(D), at 4. On February 6, 2023, Towne filed the Motion, which seeks to dismiss this action without prejudice because of his inability to litigate his claims successfully while incarcerated at the MDC. See Motion at 1.

Rule 41(a) of the Federal Rules of Civil Procedure gives plaintiffs an absolute right to dismiss an action without prejudice "before the opposing party serves either an answer or a motion

for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). See Janssen v. Harris, 321 F.3d 998, 1000 (10th Cir. 2003)(noting that the right to dismiss under rule 41(a)(1)(A)(i) is “absolute”). MDC has not filed an answer or summary judgment motion. The Court, therefore, will grant Towne’s request to dismiss voluntarily this case without prejudice.

IT IS ORDERED that: (i) the Plaintiff’s Complaint for Violation of Civil Rights (Prisoner Complaint), filed October 27, 2022 (Doc. 3), is dismissed without prejudice; and (ii) the Court will enter a separate Final Judgment disposing of this case.



UNITED STATES DISTRICT JUDGE

Parties:

Shawn Michael Towne
Albuquerque, New Mexico

Plaintiff pro se